

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|--------------------------|---|----------------------------|
| United States of America |) | |
| |) | CASE NO. 1:06CR271 |
| Plaintiff(s), |) | 1:08CV331 |
| |) | |
| v. |) | <u>M E M O R A N D U M</u> |
| |) | |
| Andre Martin |) | <u>O P I N I O N</u> |
| |) | |
| Defendant(s). |) | |
| |) | |

The defendant petitioner filed a motion to vacate his conviction and sentence pursuant to Title 28 U.S.C. Section 2255 on the 11th of February, 2008.

The Government promptly filed a motion to dismiss, based on the proposition that the defendant petitioner has pending before the Sixth Circuit Court of Appeals an appeal from his conviction and sentencing.

Good cause having been shown, the petition for habeas relief is dismissed without prejudice to refiling in the event his conviction and sentence is affirmed by the Sixth Circuit.

The Court will not issue a certificate of appealability.

IT IS SO ORDERED.

March 17, 2008
Date

/s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge